

#4 Noah Smith



September 24, 2014

OFFICERS

William J. Maze
President
Patricia A. Maceroni,
1st Vice President
Elizabeth LaCosse,
2nd Vice President
Rhonda Ives, Treasurer
Karl Numinen, Secretary
Penny R. Beardslee
Past President

BOARD MEMBERS

Michael Bartish
Joshua Blanchard
Stacia Buchanan
Lynn D'Orlo
Robyn Frankel
Stuart G. Friedman
Daniel Grow
Keeley Heath
Thomas M. Loeb
Harry Mihas
Steven I. Moss
Nicole L. Smith
Gary K. Springstead
Charlotte Steffen-Ramirez
Michael L. Steinberg
William W. Swor
Dawn Van Hoek
Rafael Villarruel

**EXECUTIVE
DIRECTOR**

Ramona L. Sain

Mailing Address
P.O. Box 279
Davison, MI 48423

517.579.0533 office
www.CDAMonline.org

The Criminal Defense Attorneys of Michigan (CDAM) offer the following comments regarding HB 4206 (Representative Harvey Santana, D – Detroit), and to the degree they overlap, HB 5585 (Representative Kurt Heise, R – Plymouth):

CDAM appreciates and applauds the primary goal of HB 4206, which is to expand the Holmes Youthful Trainee Act (HYTA) to a broader age-range of offenders. The historic focus of HYTA fits not only the existing population under law, but this potential new population as well; recognizing youth, immaturity, and impulse, judges are given a tool in HYTA to both punish and rehabilitate without further-burdening the prison system. In short, HYTA exists because we agree in a civilized society that most youthful criminal offender should have a chance to reform their lives and avoid the stigma and burden of a criminal conviction. The vast body of research shows that although Michigan law 18-year-olds adults, rational decision-making is still compromised well into a person's twenties. HB 4206 rightly recognizes that, and extends the rehabilitative nature of HYTA to that broader age-range.

The problem, however, with HB 4206 (and HB 5585) is in its exceptions. First, HB 4206 adds additional crimes to the exclusions from HYTA. Second, the bill limits HYTA to just one time. These are limitations that do not currently exist in law, and while a discussion is warranted about how we treat this expanded and "adult" population with regard to qualifying for HYTA, these exclusions could lead to a limiting of the people eligible for HYTA while the bill is actually attempting to the opposite: *increase* the population eligible for HYTA.

To the first point: CDAM understands the legislature's sensitivity to certain violent crimes. However, it is *exactly those types of crimes* that are fueled by youth, alcohol, irrational and immature behavior, and any number of other valid factors. To exclude those crimes – which HYTA currently recognizes as crimes eligible, reasonable, and rational for rehabilitation – while expanding the age range both limits judicial discretion and moves people out of HYTA whereby, again, the legislation's intent is to broaden it. The existing exclusions are already strict: driving offenses, drunk driving offenses, most sex crimes and any offense otherwise punishable by up to life in prison. CDAM proposes to remove those exclusions and use those already in current law.

To the second point: HYTA is a tool that judges can use at their discretion. To limit an offender to just one "use" of HYTA certainly limits that discretion. Additionally, it is hard to determine what problem with HYTA is being corrected by this limitation. Moreover, sometimes multiple HYTA eligibility is determined today for one offender who may commit a number of crimes all as one course of conduct.

In other words, given that the law is currently silent on how often a judge can impose HYTA, the judge has the flexibility to create the best, safest, most effective sentence offender by offender.

CDAM is happy to continue discussions with the bill sponsor and committee Chair